

Chapter 173-505 WAC

INSTREAM RESOURCES PROTECTION AND WATER RESOURCES PROGRAM

Stillaguamish River Basin
Water Resources Inventory Area (WRIA) 5

NEW SECTION

WAC 173-505-010 General provisions--Authority and applicability. (1) This chapter is adopted under the authority of the Water Resources Act of 1971 (chapter 90.54 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), Water Well Construction Act (chapter 18.104 RCW), Water resource management (chapter 90.42 RCW), Regulation of public ground waters (chapter 90.44 RCW), and Water resources management program (chapter 173-500 WAC).

(2) This chapter applies to the use and appropriation of:

(a) All surface waters that drain within the Stillaguamish River basin, also known as water resources inventory area (WRIA) 5, including its tributaries and areas adjacent to the mouth of the Stillaguamish River that drain to salt water; and

(b) All ground water hydraulically connected with surface waters of the Stillaguamish River basin. Existing studies indicate a substantial likelihood that all waters within WRIA 5 are in hydraulic continuity with the surface waters covered herein.

(3) This chapter shall not affect existing water rights, including perfected riparian rights or other appropriative rights existing on the effective date of this chapter, unless otherwise provided for in the conditions of the water right in question.

(4) This chapter shall also not affect federal Indian and non-Indian reserved rights. The Stillaguamish Tribe of Indians and the Tulalip Tribes reserve the right to a claim for a treaty-derived off-reservation instream flow right with senior priority. The extent of such rights can only be adjudicated in federal or state court.

(5) This chapter does not limit the department's authority to establish instream flow requirements or conditions under other laws, including hydropower licensing under RCW 90.48.260.

(6) In accordance with RCW 90.54.090, all agencies of state and local government, including counties and municipal and public corporations, shall, whenever possible, carry out powers vested in them in manners which are consistent with this chapter.

(7) In administering and enforcing this chapter, the department's actions shall be consistent with the provisions of chapter 90.54 RCW.

NEW SECTION

WAC 173-505-020 Purpose. (1) The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Stillaguamish River basin with instream flows and levels necessary to protect and preserve wildlife, fish, scenic, aesthetic, recreation, water quality and other environmental values, navigational values, and stock water requirements.

(2) The chapter creates a reservation of adequate and safe supplies of potable water to satisfy human domestic needs, and reservations for stock watering.

(3) This chapter sets forth the department's policies to guide the protection, utilization and management of Stillaguamish River basin surface water and interrelated ground water resources. It establishes instream flows and closures, and sets forth a program for administration of future water allocation and use. This chapter does not relieve anyone from compliance with relevant statutory requirements.

NEW SECTION

WAC 173-505-030 Definitions. For the purposes of this chapter, the following definitions shall be used. In the event that these definitions differ from those contained in related rules, the definitions presented here will supersede any others for this chapter:

(1) **"Allocation"** means the designating of specific amounts of water for specific beneficial uses.

(2) **"Appropriation"** means the process of legally acquiring the right to specific amounts of water for beneficial uses, as consistent with the requirements of the ground and surface water codes and other applicable water resource statutes. This term refers to both surface and ground water right permits and to ground water withdrawals otherwise exempted from permit requirements under RCW 90.44.050.

(3) **"Consumptive use"** means a use of water that diminishes the amount or quality of water in the water source.

(4) **"Department"** means the Washington state department of ecology.

(5) **"Domestic water use"** means, for the purposes of administering WAC 173-505-090, potable water to satisfy the

human domestic needs of a household or business, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental uses. Outdoor watering shall be limited to an area not to exceed a total of 1/12th of an acre, or three thousand six hundred thirty square feet, for all outdoor uses for each individual domestic water use. Under all circumstances, total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre.

(6) **"Instream flow"** means a stream flow level set in rule that is required to protect and preserve fish, wildlife, scenic, aesthetic and other environmental values, and navigational values. The term "instream flow" means a base flow under chapter 90.54 RCW, a minimum flow under chapter 90.03 or 90.22 RCW, or a minimum instream flow under chapter 90.82 RCW.

(7) **"Mitigation plan"** means a scientifically sound plan voluntarily submitted by a project proponent to offset the impacts of a proposed water use and approved by the department. A mitigation plan can be submitted to the department for a stream, basin, reach, or other area. A mitigation plan must show that the withdrawal with mitigation in place will not impair existing water rights, including instream flow rights, or diminish water quality. The plan must provide mitigation for the duration of the water use.

(8) **"Municipal water supplier"** means an entity that supplies water for municipal water supply purposes. (RCW 90.03.015.)

(9) **"Municipal water supply purposes"** means a beneficial use of water: (a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year; (b) for governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or (c) indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or raw water to a public water system for such use. (Partial definition; for the complete text of this definition refer to RCW 90.03.015.)

(10) **"Nonconsumptive use"** means a use of water that does not diminish the amount or quality of water in the water source.

(11) **"Permit-exempt withdrawals"** or **"permit exemption"** means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but which is otherwise subject to the ground water code.

(12) **"Reservation"** means an allocation of water for future beneficial uses. The effective date of a reservation, as well as the priority date of a given appropriation from a reservation, is the same as the effective date of this chapter.

(13) **"Stream management unit"** means a stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular instream flow level applies.

(14) **"Withdrawal"** means the appropriation or use of ground water, or the diversion or use of surface water.

NEW SECTION

WAC 173-505-040 Establishment of stream management units.
The department hereby establishes the following stream management units.

Table 1
Stream Management Unit Information
(N.F. is North Fork; S.F. is South Fork)

Stream Management Unit Name	Control Point by River Mile (RM) or Latitude North (Lat.) and Longitude West (Long.)	Stream Management Reach
Stillaguamish Mainstem	Stillaguamish River nr Silvana Ecology Station #05A070 RM 11.2 Lat. 48 11 49.5, Long. 122 12 32	From the mouth at Port Susan to the confluence of the N.F. of the Stillaguamish River and the S.F. of the Stillaguamish River.
North Fork (N.F.) Stillaguamish River:		
N.F. Stillaguamish River at Arlington, WA	USGS Station #12167000 RM 6.5 Lat. 48 15 42, Long. 122 02 47	From confluence with the S.F. Stillaguamish to river mile 17.6.
N.F. Stillaguamish River at Oso	Ecology Station #05B090 RM 17.6 Lat. 48 16 21, Long. 122 53 17	From river mile 17.6 to headwaters.
South Fork (S. F.) Stillaguamish River:		

S.F. Stillaguamish River	RM 24.4	From confluence with the N.F. Stillaguamish River to RM 34.9.
S.F. Stillaguamish River at Granite Falls, WA	USGS Station #12161000 RM 34.9 Lat. 48 06 12, Long. 121 57 07	From S.F. Stillaguamish River at RM 34.9 to headwaters.
Stillaguamish River Tributaries:		
Church Creek nr Stanwood	Ecology Station #05L070 RM 3 Lat. 48 14 54, Long. 122 18 48	From mouth to headwaters, including tributaries.
Glade Bekken Creek - stream 0030	At the Sylvania Terrace Rd. crossing RM 0.5	From mouth to headwaters, including tributaries.
Portage Creek	At 208th St. NE & 66th Ave. crossing RM 7.0	From mouth to headwaters, including tributaries.
Fish Creek	At Sill Rd. crossing RM 2.0	From mouth to headwaters, including tributaries.
Pilchuck at Bridge 626	Ecology Station #05D070 RM 0.5 Lat. 48 12 49, Long. 122 13 03	From mouth to the Campground Bridge, including tributaries.
Pilchuck Creek above Lake Creek	Ecology Station #05D150 RM 17 Lat. 48 20 35, Long. 122 03 23	From Campground Bridge to headwaters, except Lake Cavanaugh.
Pilchuck Creek Tributaries:		
Lake Creek nr mouth	Ecology Station #05K060 RM 0.2 Lat. 48 20 29, Long. 122 03 18	From mouth to headwaters, including tributaries, except Lake Cavanaugh.
North Fork (N. F.) Stillaguamish River Tributaries:		

Squire Creek at Squire Creek Park	Ecology Station #05H070 RM 1.2 Lat. 48 16 13, Long. 121 40 17	From mouth to headwaters, including tributaries.
Deer Creek nr Oso	Ecology Station #05C090 RM 1.3 Lat. 48 17 03, Long. 121 55 35	From mouth to headwaters, including tributaries.
Brooks Creek	At Brooks Creek Rd. Bridge RM 0.3	From mouth to headwaters, including tributaries.
Montague Creek	At Hwy 530 bridge RM 0.3	From mouth to headwaters, including tributaries.
Rollins Creek	Off C Post off Hwy 530 about RM 1.0	From mouth to headwaters, including tributaries.
Boulder River nr mouth	Ecology Station #05J060 RM 0.5 Lat. 48 16 40, Long. 121 46 52	From mouth to headwaters, including tributaries.
French Creek	At Hwy 530 bridge RM 0.4	From mouth to headwaters, including tributaries.
Segelson Creek	At Swede Haven Rd. bridge off Hwy 530 RM 0.3	From mouth to headwaters, including tributaries.
Furland Creek	At Hwy 530 bridge RM 0.2	From mouth to headwaters, including tributaries.
Ashton Creek	At Hwy 530 bridge RM 0.2	From mouth to headwaters, including tributaries.
Grant Creek	At Hillis Rd. bridge off Hwy 530 RM 0.1	From mouth to headwaters, including tributaries.
Rock Creek	At RM 1.1	From mouth to headwaters, including tributaries.

Koonz Creek - Stream 0138	At WDFW bridge RM 1.5	From mouth to headwaters, including tributaries.
Harvey Creek	At side road crossing of Grandview Rd. RM 1.5	From mouth to headwaters, including tributaries.
South Fork (S. F.) Stillaguamish River Tributaries:		
Jim Creek at Whites Road	Ecology Station #05G070 RM 3.3 Lat. 48 10 41, Long. 122 03 06	From mouth to headwaters, including tributaries.
Siberia Creek, tributary to Jim Creek	At mouth near 131st Ave. NE, RM 0.0	From mouth to headwaters, including tributaries.
Canyon Creek nr Masonic Park	Ecology Station #05F080 RM 5.0 Lat. 48 07 17, Long. 121 54 17	From mouth to headwaters, including tributaries.
Armstrong Creek	At Harvey Creek Rd. crossing RM 1.0	From mouth to headwaters, including tributaries.
Jordan Creek	At Jordan Rd. crossing RM 0.1	From mouth to headwaters, including tributaries.
Tiger Creek - stream 0363	Near Masonic Park, RM 1.6	From mouth to headwaters, including tributaries.

NEW SECTION

WAC 173-505-050 Establishment of instream flows. (1) Instream flows established in this section protect stream flows from future withdrawals, and preserve flow levels that are necessary to protect wildlife, fish, water quality, scenic, aesthetic and other environmental values, navigational values, and stock watering requirements.

(2) Instream flows established in this section are water

rights with a priority date the same as the effective date of this chapter.

(3) Instream flows are expressed in cubic feet per second (cfs). These flows are measured at the control points identified in WAC 173-505-040 and apply to the stream management reach. The instream flow provisions for any water right located in a stream management unit shall specifically describe the instream flow levels for the control station in that unit and shall refer generally to other downstream instream flow requirements that may also become controlling and critical to the use of water under such right.

(4) Instream flows are to be protected from impairment by junior water rights. Except as provided in WAC 173-505-080, 173-505-090, and 173-505-110, junior water rights shall be exercised only when flow conditions provide enough water to satisfy senior rights, including the instream flows set in this chapter. Withdrawals of water that would conflict with the established instream flows shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.

(5) Stream flow requirements on existing water rights are not modified by this chapter. Existing water rights that include a provision that water use will be subject to future instream flows are now subject to the instream flows established in WAC 173-505-050.

(6) Instream flows are established for the stream management units in WAC 173-505-040, as follows:

Table 2
Instream Flows for the Mainstem and North and South Forks, Stillaguamish River
(in cubic feet per second) (RM=River Mile)

Month	Day	Ecology Station #05A070 Stillaguamish RM 11.2	USGS Station #12167000 North Fork Stillaguamish RM 6.5	Ecology Station #05B090 North Fork Stillaguamish RM 17.6	South Fork Stillaguamish RM 24.4	USGS Station #12161000 South Fork Stillaguamish RM 34.9
Jan.	1-31	2200	1200	915	1800	1200
Feb.	1-29	2000	1200	850	1600	1200
Mar.	1-15	2000	1300	850	2250	1600
	16-31	2000	1300	915	2250	1600
Apr.	1-30	2000	1300	915	2000	1600
May	1-31	2000	1300	915	2000	1600
Jun.	1-15	2000	1300	915	1200	1060
	16-30	2000	1400	650	1200	1060

Jul.	1-15	2000	1100	600	1150	1060
	16-31	2000	800	500	750	700
Aug.	1-15	1700	800	425	750	700
	16-31	1700	800	500	750	700
Sep.	1-15	1700	800	700	775	700
	16-30	1700	800	850	775	700
Oct.	1-15	1700	800	870	1250	1200
	16-31	1700	800	870	1900	1700
Nov.	1-15	2200	950	915	2300	1800
	16-30	2200	950	915	2300	1800
Dec.	1-31	2200	1300	915	2500	1800

Table 3
Instream Flows for Tributaries of
the Mainstem and North and South Forks Stillaguamish River Basin
(in cubic feet per second) (RM=River Mile)

Month	Day	RM 0.5 Pilchuck Creek	RM 17 Pilchuck Creek	RM 1.2 Squire Creek	RM 3.3 Jim Creek	RM 5.0 Canyon Creek	RM 0.3 Lake Creek	RM 1.3 Deer Creek	RM 0.3 Brooks Creek
Jan.	1-31	170	98	200	250	525	21	411	39
Feb.	1-29	170	98	200	250	450	21	411	39
Mar.	1-15	170	98	280	250	450	21	474	68
Mar.	16-31	170	98	280	250	450	21	474	68
Apr.	1-30	170	98	280	250	450	21	474	68
May	1-31	170	98	280	250	450	21	474	68
Jun.	1-15	170	98	280	250	450	21	313	45
Jun.	16-30	170	98	280	250	350	21	313	45
Jul.	1-31	170	98	200	250	350	21	195	45
Aug.	1-31	140	98	200	250	350	21	88	17
Sep.	1-30	170	98	200	250	400	21	353	17
Oct.	1-31	170	98	200	250	525	21	617	39
Nov.	1-15	170	98	160	250	525	21	411	39
Nov.	16-30	170	98	160	250	525	21	411	39
Dec.	1-31	170	98	160	250	525	21	411	39

Table 4
Instream Flows for Tributaries of
the Mainstem and North and South Forks Stillaguamish River Basin
(in cubic feet per second) (RM=River Mile)

Month	Day	RM 0.3 Montague Creek	RM 1.0 Rollins Creek	RM 0.5 Boulder Creek	RM 0.4 French Creek	RM 0.3 Segelson Creek	RM 0.2 Furland Creek	RM 0.2 Ashton Creek	RM 0.1 Grant Creek
Jan.	1-31	29	47	167	56	47	33	34	67
Feb.	1-29	29	47	167	56	47	33	34	67
Mar.	1-15	53	80	203	73	79	44	46	87
Mar.	16-31	53	80	203	73	79	44	46	87
Apr.	1-30	53	80	203	73	79	44	46	87
May	1-31	53	80	203	73	79	44	46	87
Jun.	1-15	35	53	134	48	52	29	30	57
Jun.	16-30	35	53	134	48	52	29	30	57
Jul.	1-31	35	53	134	48	52	29	30	57
Aug.	1-31	12	20	154	18	20	10	10	23
Sep.	1-30	12	47	250	84	47	49	51	101
Oct.	1-31	29	47	167	84	47	49	51	101
Nov.	1-15	29	47	167	56	47	33	34	67
Nov.	16-30	29	47	167	56	47	33	34	67
Dec.	1-31	29	47	167	56	47	33	34	67

Table 5
Instream
Flows for Tributaries of
the Mainstem and North and South Forks Stillaguamish River Basin
(in cubic feet per second) (RM=River Mile)

Month	Day	RM 3.0 Church Creek	RM 0.5 Glade Bekken Creek	RM 7.0 Portage Creek	RM 2.0 Fish Creek	RM 1.1 Rock Creek	RM 1.5 Koonz Creek
Jan.	1-31	24	10	11	16	29	19
Feb.	1-29	24	10	11	16	29	19
Mar.	1-15	43	21	22	30	53	36
Mar.	16-31	43	21	22	30	53	36
Apr.	1-30	43	21	22	30	53	36
May	1-31	43	21	22	30	53	36

Jun.	1-15	28	14	14	20	35	24
Jun.	16-30	28	14	14	20	35	24
Jul.	1-31	28	14	14	20	35	24
Aug.	1-31	10	4	4	6	12	8
Sep.	1-30	10	4	4	6	29	19
Oct.	1-31	24	10	11	16	29	19
Nov.	1-15	24	10	11	16	29	19
Nov.	16-30	24	10	11	16	29	19
Dec.	1-31	24	10	11	16	29	19

Table 6
Instream Flows for Tributaries of
the Mainstem and North and South Forks Stillaguamish River Basin
(in cubic feet per second) (RM=River Mile)

Month	Day	RM 1.5 Harvey Creek	RM 1.0 Armstrong Creek	RM 0.1 Jordan Creek	RM 1.6 Tiger Creek	RM 0.0 Siberia Creek
Jan.	1-31	9	34	18	27	37
Feb.	1-29	9	34	18	27	37
Mar.	1-15	6	46	34	48	49
Mar.	16-31	6	46	34	48	49
Apr.	1-30	6	46	34	48	49
May	1-31	4	46	34	48	49
Jun.	1-15	4	30	22	32	32
Jun.	16-30	4	30	22	32	32
Jul.	1-31	4	30	22	32	32
Aug.	1-31	4	10	7	11	11
Sep.	1-30	4	51	18	11	27
Oct.	1-31	4	51	18	11	55
Nov.	1-15	9	34	18	27	37
Nov.	16-30	9	34	18	27	37
Dec.	1-31	9	34	18	27	37

NEW SECTION

WAC 173-505-060 Lakes and ponds. RCW 90.54.020(3) provides, in part, that the quality of the natural environment shall be protected, and where possible, enhanced, and lakes and ponds shall be retained substantially in their natural condition. The department has determined that further consumptive withdrawals would impact the lakes and ponds of the Stillaguamish River basin. Therefore, surface withdrawals from all lakes and ponds shall be limited to single in-house domestic uses not to exceed one hundred fifty gallons per day per residence.

NEW SECTION

WAC 173-505-070 Stream closures. (1) The department determines that, based on historical and current low flows and uses, no water is available for additional year-round appropriation from the streams and tributaries in the Stillaguamish River basin. All unappropriated water from the streams and rivers is hereby appropriated for purposes of protecting and preserving fish and wildlife and other instream values, as of the date of this chapter. Therefore, the department closes all the rivers and streams in the Stillaguamish River basin to any further appropriations. This includes all ground water hydraulically connected to those surface waters, the withdrawal of which will have an effect on the flow or level of the rivers and streams.

(2) Exceptions to the closures and instream flow requirements are provided in WAC 173-505-060, 173-505-070(3), 173-505-080, 173-505-090 and 173-505-110.

(3) The department finds that there is some water above the instream flows at specific locations and times of year that could be captured for storage or other projects that do not require year-round, uninterruptible water supplies. Therefore, the water sources described in the table below have water available for the time periods specified. These withdrawals are subject to the instream flows established in WAC 173-505-050 and the maximum allocations defined in WAC 173-505-100(2).

Table 7

Water Source and Open Periods*

Water Source	Open Period
Stillaguamish River from its multiple mouths at Port Susan to the confluence of N.F. Stillaguamish River and S.F. Stillaguamish River (RM 0 to 17.8).	October 16-June 30
N.F. Stillaguamish, from RM 0 (its confluence with the S.F. Stillaguamish) to river mile 17.6.	October 16-June 30
N.F. Stillaguamish River, from RM 17.6 to its headwaters.	November 1-June 30
S.F. Stillaguamish River from its confluence with the N.F. Stillaguamish River (RM 17.8) to RM 34.9.	November 1-June 15
Pilchuck Creek from mouth to RM 16.4 (confluence of Bear Creek).	October 16-May 31
Squire Creek from mouth to its headwaters.	November 1-February 15, and May 1-June 30
Canyon Creek from mouth to RM 11.8 (confluence of N.F. Canyon Creek and S.F. Canyon Creek).	December 1-May 31
N.F. is North Fork S.F. is South Fork RM is river mile *Tributaries to the water sources are excluded from the open period unless specifically listed.	

NEW SECTION

WAC 173-505-080 Future stock watering. (1) Consistent with RCW 90.22.040, the department retains one cubic foot per second of surface water for future stock watering pursuant to the following requirements:

(a) This surface water flow is available to satisfy stock watering requirements for stock on riparian grazing lands which drink directly from streams, lakes or other public waters. Appropriation or use of water from the reservation for stock watering shall be limited to the land base and carrying capacity of the grazing lands next to the stream or water course. The reservation shall not be available for feedlots and other activities which are not related to normal grazing land uses.

(b) The department encourages existing riparian stock water right holders to remove livestock from streams for the purpose of protecting water quality and stream habitat. Uses that meet the following conditions shall be considered to qualify as direct stock watering from a stream:

(i) Small amounts of water are diverted (screened and piped) to nearby stock water tanks for consumption by livestock;

(ii) Stock water tanks shall be located close to the surface water source, and have as short a bypass reach as possible, while providing protection to the water body, stream bank and associated vegetative zone;

(iii) If a float or demand type valve is not used, the tank overflow must return to the same source, at or near the point of diversion;

(iv) The stock tank must serve stock, which normally range that parcel of property; and

(v) The quantity of water consumed from the stock tank should not exceed the quantity consumed if the stock drank directly from the stream.

(c) The decision by a person to divert stock water from the stream and into a tank does not constitute an adjudication of any claim to the right to the use of the water, as between the claimant and the state, or as between one or more water use claimants and another or others.

(2) The department reserves twenty acre-feet per year of ground water for future stock watering.

(3) The department will maintain an estimate of the amount of water used from the reservation, and reserves the right to require metering and reporting of water use to ensure compliance with the conditions of use for stock watering under this

section.

NEW SECTION

WAC 173-505-090 Reservation of permit-exempt ground water for future domestic uses. (1) The department has weighed the public interest supported by providing a limited amount of water for domestic uses with the potential for negative impact to instream flow resources. The department finds that the public interest advanced by this limited reservation clearly overrides the small potential for negative impacts on instream resources (RCW 90.54.020 (3)(a)).

Based on this finding, the department hereby allocates a total amount of water not to exceed five cubic feet per second (5 cfs) to provide adequate and safe supplies of water for year-round future domestic uses. Of that 5 cfs, the reservation is further defined by limits on the amount of reserved water that can be withdrawn from the North and South Forks of the Stillaguamish River, as identified in the following table.

This reservation of ground water is not subject to the instream flows established in WAC 173-505-050 or the stream closures established in WAC 173-505-070.

Table 8
Allocation of Reservation as Measured at Specified
River Miles

Water Source (RM - River Mile)	Amount of Water Available, Measured in Cubic Feet per Second (cfs) and Gallons per Day (gpd)
Stillaguamish River at RM 11.2	5 cfs or 3.23 million gpd
Of that 5 cfs, the following maximums may be taken from the specified locations:	
North Fork Stillaguamish River at RM 6.5	2 cfs or 1,292,544 gpd
South Fork Stillaguamish River at RM 24.4	1.5 cfs or 969,408 gpd

(2) Use of water under the reservation is available only if all the conditions set forth in this section are fully complied with. Conditions for use of the reservation water are:

(a) The reserved water shall be for ground water uses exempt from a water right permit application. This reservation is for either single or small group domestic uses, as defined in WAC 173-505-030(5).

(b) This reservation of ground water shall not exceed 3.23

million gallons of water per day (5 cfs).

(c) Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any applicable local or state requirements for conservation standards.

(d) This reservation shall be applicable only when the appropriate city(ies) or counties submit a written acknowledgment to the department that confirms that any legally required determinations of adequate potable water for building permits and subdivision approvals will be consistent with applicable provisions of this chapter.

Once this chapter is adopted and written acknowledgment is received, the department will promptly notify those city(ies) or counties, the tribes, water well contractors and the public that the reserve is in effect in those jurisdictions where acknowledgments exist.

(e) It shall be the responsibility of an applicant for a building permit or subdivision approval proposing a water use under the reservation to comply with the conditions in (a), (c), (e), (f), (g) and (h) of this subsection and all other conditions of this chapter.

(f) A new ground water withdrawal under this reservation is not allowed in areas where a municipal water supply has been established and a connection can be provided by the municipal supplier. If an applicant for a building permit or subdivision approval cannot obtain water through a municipal supplier, the applicant must obtain a letter from a municipal supplier prior to drilling a well which states that service was denied. Such a denial shall be consistent with the criteria listed in RCW 43.20.260.

(g) Outdoor water use is limited to the watering of an outdoor area not to exceed a total of 1/12th of an acre for all outdoor uses under each individual domestic water use. Under all circumstances, total outdoor watering for multiple residences under the permit exemption (RCW 90.44.050) shall not exceed one-half acre.

(h) The department reserves the right to require metering and reporting of water use for single domestic users, if more accurate water use data is needed for management of the reservation and water resources in the area of the reservation. All other ground water users under the permit-exemption shall be required to install and maintain measuring devices, in accordance with specifications provided by the department, and report the data to the department.

(3) The reservation is a one-time, finite amount of water. Once the reservation is fully allocated, it is no longer available. Other water sources may be available under the provisions in WAC 173-505-110, 173-505-120, 173-505-130 and 173-505-140.

(4) The department shall notify the appropriate county, in

writing, when it determines that fifty percent, seventy-five percent, and one hundred percent of the reservation has been allocated. The department shall also issue a public notice annually in a newspaper of general circulation for the region that shows the amounts of reserved water that have been allocated and what remains unallocated, as well as identifying any water source that has been fully allocated and from which water is no longer available under this reservation.

(5) If a water use is not in compliance with any condition of this reservation, the department may take action consistent with WAC 173-505-150.

(6)(a) A record of all ground water withdrawals from the reservation shall be maintained by the department. The department will account for water use under the reservation based on the best available information reflecting actual water uses contained in well logs, water availability certificates issued by the counties, water rights issued by the department, public water system approvals or other documents. When other sources of information are not readily available, the department may account for water use at a rate of three hundred fifty gallons per day (gpd) per residence or business. This figure may be adjusted down to one hundred seventy-five gpd if the residence or business is served by an on-site septic system.

(b) If an entity using water under this reservation subsequently abandons the withdrawal and notifies the department, the water use may be credited back to the reservation.

NEW SECTION

WAC 173-505-100 Maximum allocations. (1) High flows provide critical ecological functions such as channel and riparian zone maintenance, flushing of sediments, and in and out migration of fish. The protection of the frequency and duration of higher ecological flows can be accomplished by establishing a maximum amount of water/flow that can be withdrawn from the stream above the instream flow levels.

(2) Therefore, the department determines that the total consumptive withdrawals from existing and future water rights in the Stillaguamish River basin during open periods shall not exceed a total of 300 cubic feet per second (cfs) as measured at ecology station #05A070, river mile 11.2. Of that 300 cfs, the maximum allocation is further defined by limits on the amount of water that can be withdrawn from specified stream reaches, at specific times. Refer to the table and map, below.

Table 9
Maximum Allocation

Water Source*	Open Period
Stillaguamish River from its multiple mouths at Port Susan to the confluence of N.F. Stillaguamish River and S.F. Stillaguamish River (RM 0 to 17.8).	October 16-June 30
	Maximum Allocation 300 cfs
Of that 300 cfs, the following maximums may be taken from the specified stream reaches at the specified times:	
N.F. Stillaguamish, from RM 0 (its confluence with the S.F. Stillaguamish) to river mile 17.6.	October 16-June 30
	Maximum Allocation 150 cfs
N.F. Stillaguamish River, from RM 17.6 to its headwaters.	November 1-June 30
	Maximum Allocation 120 cfs
S.F. Stillaguamish River from its confluence with the N.F. Stillaguamish River (RM 17.9) to RM 34.9.	November 1-June 15
	Maximum Allocation 150 cfs
Pilchuck Creek from mouth to RM 16.4 (confluence of Bear Creek).	October 16-May 31
	Maximum Allocation 50 cfs
Squire Creek from mouth to its headwaters.	November 1-February 15, and May 1-June 30
	Maximum Allocation 20 cfs

Canyon Creek from mouth to RM 11.8 (confluence of N.F. Canyon Creek and S.F. Canyon Creek).	December 1-May 31	
	Maximum Allocation 40 cfs	
N.F. is North Fork	S.F. is South Fork	RM is river mile

* Tributaries to the water sources are excluded from the open period unless specifically listed.

N.F. is North Fork; **S.F.** is South Fork; **cfs** is cubic feet per second; **confluence** = the juncture of two or more flowing streams

Figure 1
Maximum allocations for specific stream reaches (listed above)
in the Stillaguamish River basin, measured at designated control
points



(3) All water rights issued after the effective date of this chapter are subject to the maximum allocation limits, the

instream flows established in WAC 173-505-050 and other applicable provisions in this chapter. Use of the water must be consistent with the requirements of the surface water code (chapter 90.03 RCW) and other applicable statutory, administrative and case laws.

(4) The department will maintain a record of the amount of water allocated from all water rights in the Stillaguamish River basin, including those existing prior to the effective date of this chapter. When the maximum allocation is fully appropriated for any river, river reach, or stream, the department shall notify the appropriate county, in writing. The department shall also issue a public notice in a newspaper of general circulation for the region stating the maximum allocation is fully allocated.

NEW SECTION

WAC 173-505-110 Future permitting actions. (1) Surface and ground water permits not subject to the instream flows and closures established in WAC 173-505-050 and 173-505-070 may be issued if any of the following situations apply:

(a) The proposed use is nonconsumptive, and compatible with the intent of this chapter.

(b) The applicant elects to submit a scientifically sound mitigation plan, as defined in WAC 173-505-030(7), and it is approved by the department. If monitoring of a mitigation plan shows the mitigation is not effective, use of water under the permit shall then be subject to the instream flows. In the case of a closed stream, the use shall cease until a more effective mitigation plan is put in place.

(c) The proposed ground water use will not impair senior water rights. Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, future ground water withdrawals have a high likelihood of capturing water that would result in impacts to surface water flows and levels in the Stillaguamish River basin. Therefore, a ground water permit that is not subject to the instream flows or closures may be approved only if an applicant can demonstrate, through studies and technical analysis, and to the satisfaction of the department, that the proposed use will not cause impairment to existing water rights, including the instream flows set in this chapter.

(d) Before the department can approve a water right application for a new public water supply under (b) or (c) of this subsection, the applicant must also demonstrate that there

are no other municipal water suppliers in the same proposed retail service area that can provide water. If domestic potable water can be provided by another municipal supplier, the department shall reject the water right application.

(e) The proposed use is for a salmon recovery project recommended for approval by the department of fish and wildlife.

(2) All water right permits approved by the department for a consumptive use from a water source with instream flows established by this chapter and during open periods are subject to those instream flows, as established in WAC 173-505-050. In addition, the total appropriation cannot exceed the maximum allocation limits described in WAC 173-505-100.

(3) No right to withdraw, divert or store the public surface or ground waters of the Stillaguamish River basin that conflicts with the provisions of this chapter will hereafter be granted, except in cases where such rights will clearly serve overriding considerations of the public interest, as stated in RCW 90.54.020 (3)(a).

(4) All future surface and ground water permit holders shall be required to install and maintain measuring devices, in accordance with specifications provided by the department, and report the data to the department in accordance with the permit requirements. In addition, the department may require the permit holder to monitor stream flows and ground water levels.

NEW SECTION

WAC 173-505-120 Alternative sources of water. (1) The legislature has long acknowledged that water supply and availability around the state are becoming increasingly limited, particularly during summer and fall months and dry years when demand is greatest. Growth and prosperity have significantly increased the competition for this limited resource (RCW 90.54.090 (1)(a)). This chapter provides limited exceptions for new uses in the Stillaguamish River basin. However, there is a continuing need for ongoing and reliable sources for new water uses. This need dictates the continued development and use of alternative sources of water, such as:

- ✎ Reuse of reclaimed water;
- ✎ Artificial recharge and recovery;
- ✎ Multipurpose water storage facilities;
- ✎ Conservation and efficiency measures applied to existing uses and the transfer of saved water;
- ✎ Acquisition of existing water rights; and
- ✎ Establishment of a trust water rights program.

(2) Alternative sources of water of equal or better quality than a new source can be used to improve stream flows for fish, offset impacts of withdrawals on stream flows and provide sources of water for future out-of-stream uses.

NEW SECTION

WAC 173-505-130 Establishment of trust water rights program. (1) The department will establish a trust water right program to facilitate the acquisition of existing water rights through purchases, long-term leases, donations and conserved water saved through state and federally funded conservation projects.

(2) The determination of how much water should be allocated between future out-of-stream uses and the restoration and enhancement of instream flows will be made at the time the water is acquired and deposited into the trust water rights program.

NEW SECTION

WAC 173-505-140 Future changes and transfers. No changes or transfers to existing surface or ground water rights in the Stillaguamish River basin shall hereafter be granted that conflict with the purposes or provisions of this chapter. Any change or transfer proposals can be approved only if there is a finding that existing rights, including instream flows hereby established, will not be impaired.

NEW SECTION

WAC 173-505-150 Compliance and enforcement. (1) In accordance with RCW 90.03.605, in order to obtain compliance with this chapter, the department shall prepare and distribute technical and educational information regarding the scope and requirements of this chapter to the public. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When the department determines that a violation has occurred, it shall:

(a) First attempt to achieve voluntary compliance. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, the department shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

NEW SECTION

WAC 173-505-160 Appeals. All final written decisions of the department of ecology pertaining to water right applications, permits, certificates, regulatory orders and related decisions made pursuant to this chapter can be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-505-170 Regulation review. Review of this chapter may be initiated by the department whenever significant new information is available, a significant change in conditions occurs, or statutory changes are enacted that are determined by the department to require review of the chapter.

NEW SECTION

WAC 173-505-180 Map. For the purposes of administering this chapter, the boundaries of the Stillaguamish River basin contained in the figure below are presumed to accurately reflect the basin hydrology unless demonstrated otherwise.

Figure 2

